

No. 18447

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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BRUCE ARNOLD HASEROT,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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## APPELLEE'S BRIEF.

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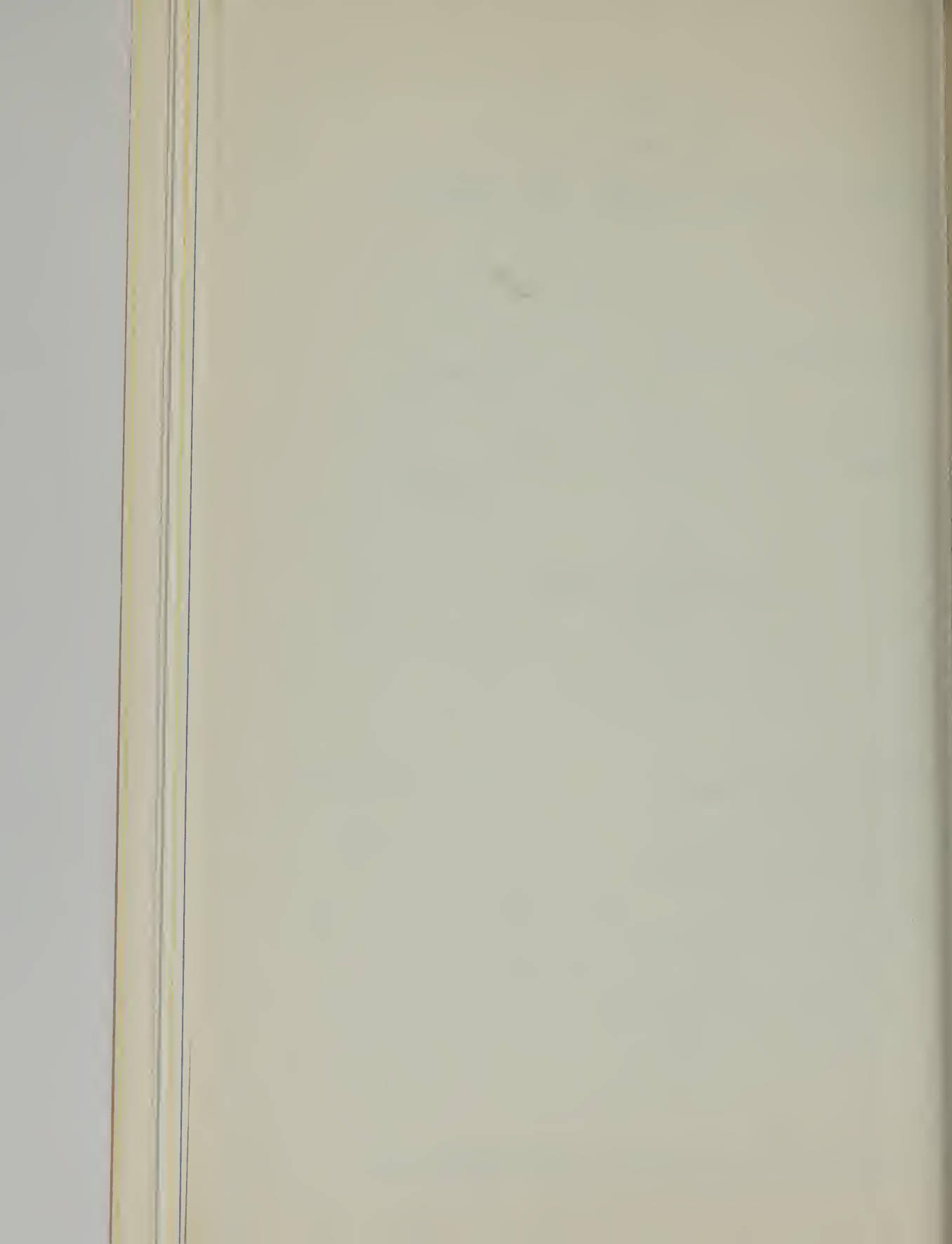
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I.

### JURISDICTIONAL STATEMENT.

This is an appeal from the judgment of the United States District Court for the Southern District of California, adjudging appellant to be guilty as charged in a one-count indictment in a non-jury trial.

The offense occurred in the Southern District of California. The District Court had jurisdiction by virtue of Title 18, United States Code, Sections 1407 and 3231.

Jurisdiction of this Court rests pursuant to Title 28, United States Code, Sections 1291 and 1294.

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II.

STATEMENT OF THE CASE.

On June 15, 1962, appellant entered a plea of not guilty to a one-count indictment charging that on or about May 14, 1962, he returned to and entered the United States without registering with a Customs official, agent or employee at the point of entry as required by law, and without surrendering the certificate, required by law to be obtained by said defendant upon leaving the United States, to said Customs official, agent or employee. The indictment also alleged that appellant was required to register because he was convicted of a violation of a narcotic law of the State of California (Section 11502, Health and Safety Code), the penalty for which was imprisonment for more than a year, on or about October 19, 1959, in the Superior Court, Los Angeles County. The Federal charge was brought under Title 18, Section 1407, United States Code.

Appellant waived jury trial on June 15, 1962. [R. T. 4.]<sup>1</sup> On July 6, 1962, appellant was found guilty as charged in a court trial. [R. T. 9.] Thereafter, on July 20, 1962, appellant was sentenced to imprisonment for a period of two years, subject to the provisions of Title 18, Section 4208(a)(2), United States Code [R. T. 11] (which provides eligibility for immediate parole, in the discretion of the board of parole). He thereafter filed notice of appeal.

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<sup>1</sup>"R. T." refers to Reporter's Transcript of Proceedings.



III.  
**ERROR SPECIFIED.**

Appellant specifies only one point on appeal:

That the District Court erred as a matter of law in finding the defendant guilty of a violation of Title 18, Section 1407, United States Code, when the evidence disclosed that the previous conviction was for the sale of a non-narcotic in violation of Section 11502, California Health and Safety Code.<sup>2</sup> (Brief for Appellant, p. 2.)

IV.  
**STATEMENT OF FACTS.**

On October 19, 1959, in the Superior Court, County of Los Angeles, State of California, appellant was convicted of a violation of Section 11502 of the California Health and Safety Code, sale of a substance falsely represented to be a narcotic, the penalty for which offense was imprisonment for more than one year. [R. T. 10.]

On May 14, 1962, appellant, a citizen of the United States, returned and entered into the United States at the Port of San Diego (San Ysidro), California, without registering with a Customs official, agent or employee at said point of entry, and without surrendering a certificate, showing that he had registered, to said Customs official, agent or employee. [R. T. 10.]

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<sup>2</sup>Now Section 11503, Health and Safety Code.

ARGUMENT.

Section 11502, California Health and Safety Code  
(Now Section 11503) Is a State Narcotic Law.

The Federal statute in question applies to a person who “*has been convicted of a violation of any of the narcotic or marihuana laws of . . . any state. . .*” Title 18, *United States Code*, Section 1407.

The sole question upon this appeal is whether Section 11503 (former Section 11502) is a “narcotic law.”

Former Section 11502 read as follows:

“Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any narcotic to any person, or offers, arranges, or negotiates to have any narcotic unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any narcotic shall be punished by imprisonment in the county jail for not more than one year, or in the state prison for not more than 10 years.”

The *primary* purpose of the statute is “to reduce and control the amount of illegal narcotics crossing the border by checking carefully the person and possessions of those most likely to be importing the drugs.”

*Reyes v. United States*, 258 F. 2d 774, at 785 (9th Cir. 1958).

The purpose of the California statute was set forth in the progress report to the Legislature, 1953 Regular Session, by the Assembly Interim Committee on Judiciary, January 1953, Part XV, Final Report of Subcommittee on Narcotics, p. 254, as follows:

“2. Section 11502 is added to the code and will be entirely new law. This will cover the individual who agrees to sell, furnish, transport, or give away any narcotic, and then delivers some other liquid, substance, or material. *These individuals are known to be in a position to violate the law; but, for some reason, they may feel that they are dealing with a law enforcement officer and thus deliver tobacco, water, or some other substance with the result that they have had the intent to commit the crime but are testing out the officer. At the present time, nothing can be done to that person, except to charge with with (sic) ‘bunco.’ Under this statute it provides a penalty of not more than one year in the county jail or the state prison for 10 years.’*”

*People v. Shephard*, 169 Cal. App. 2d 283 at 287-288 (1959). (Emphasis added.)

It is submitted that the avowed purpose of the California statute, *i.e.*, to control individuals “known to be in a position to violate the law,” falls squarely within the primary purpose of Section 1407, *i.e.*, to check “carefully the person and possessions of those most likely to be importing the drugs.”

Although appellant argues that Section 11503 is a fraud statute rather than a narcotics law, it is obvious

that the section was passed in order to meet a narcotics problem that could not be adequately handled by prosecution for fraud, *i.e.*, obtaining money by false pretenses. If the California legislature intended that the offense be prosecuted as a fraud, it would not have been necessary to pass a new statute.

There is an essential difference between Section 11503 of the Health and Safety Code and the California criminal fraud (false pretenses) statute, which is Section 484 of the California Penal Code. The fraud portion of Section 484 is not violated unless the intended victim is deprived of money, labor, or property. Section 11503 does not require a loss.

It is clear that Section 11503 is a "narcotic law." It is found in the Health and Safety Code under Division X, entitled "*Narcotics.*" It is found under Chapter 5, entitled "*Illegal Narcotics.*"

The section is listed among the prior narcotics offenses precluding probation in the event of a subsequent conviction.

*California Health and Safety Code, Section 11715.6.*

The statute is one of those narcotics offenses involving increased potential punishment limits in the event of a subsequent conviction.

*California Health and Safety Code, Sections 11500, 11500.5, 11501, 11502, 11502.1.*

If there were any doubts about the matter, they would be eradicated by the fact that persons convicted of violation of Section 11503 are required to register

under Article 6 of the Health and Safety Code, entitled "*Registration of Narcotic Offenders.*"

*California Health and Safety Code*, Section 11850.

Thus Section 11503 is lumped with other narcotics offenses in at least seven separate California statutes.

VI.

CONCLUSION.

In conclusion it is respectfully submitted that appellant's former conviction was under a state "narcotic law" and that the verdict of guilty in the court below should be affirmed.

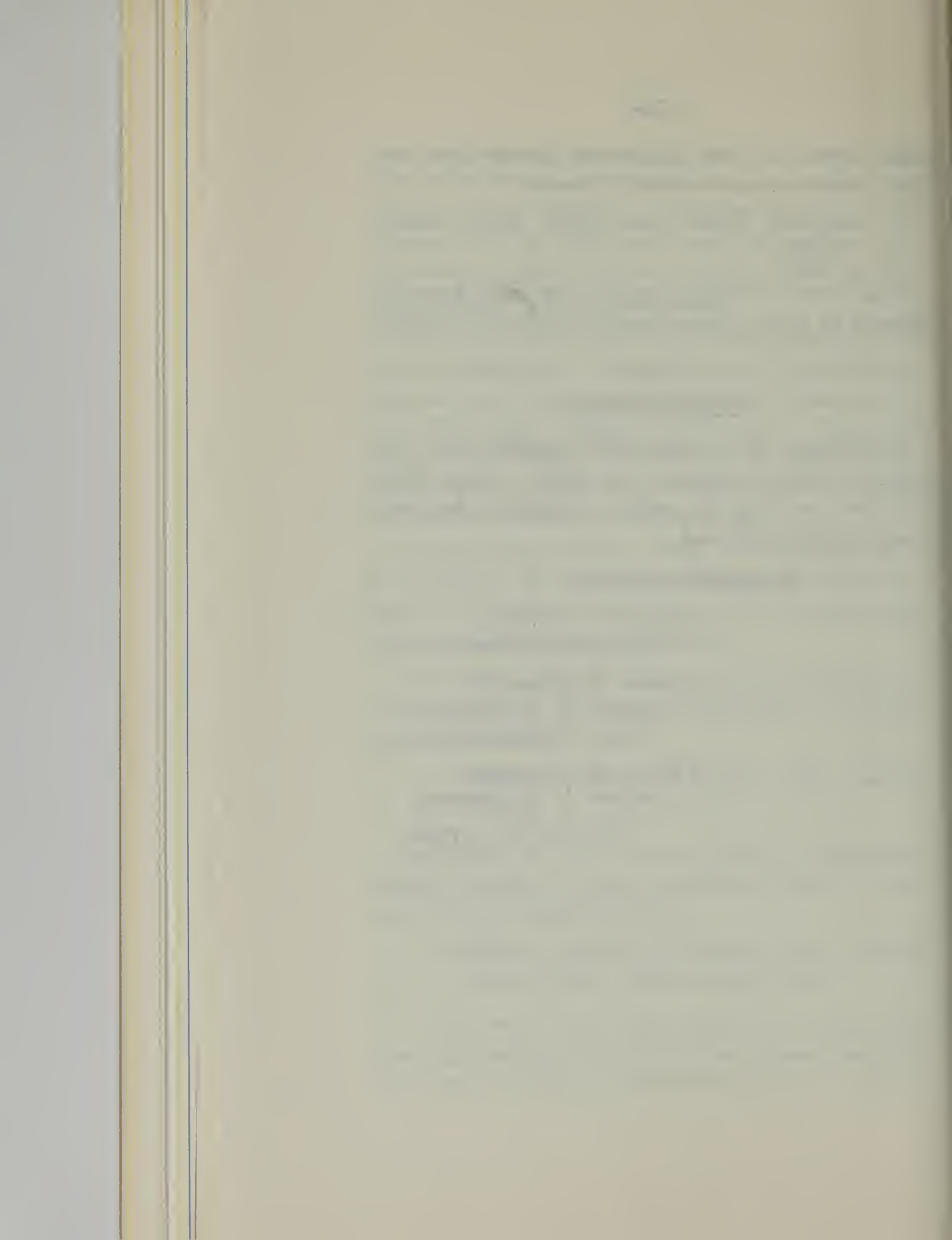
Respectfully submitted,

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PHILLIP W. JOHNSON,  
*Assistant U. S. Attorney,*  
*Attorneys for Appellee.*







**Certificate.**

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, the foregoing brief is in full compliance with those rules.

PHILLIP W. JOHNSON,

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